



**FILED**

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*Kevin L. Smith*

**CLERK**  
of the supreme court,  
court of appeals and  
tax court

**BARNES, Judge**

## **Case Summary**

Keith Patton appeals the denial of his motion to correct erroneous sentence. We affirm.

## **Issue**

Patton raises one issue, which we restate as whether the trial court properly denied his motion to correct erroneous sentence.

## **Facts**

In 1983, Patton committed a heinous crime that included murder and rape. Patton pled guilty to murder and rape and to “a host of other charges” filed under another charging information. Patton v. State, 588 N.E.2d 494, 494 (Ind. 1992). Patton was sentenced to death and 132 years in prison.

In 1987, our supreme court reversed Patton’s murder conviction and remanded for trial and for sentencing on the rape conviction. See Patton v. State, 517 N.E.2d 374, 376 (Ind. 1987). Patton’s 132-year sentence for the other charges remained unchanged. At trial, a jury found Patton guilty and recommended against the death penalty. Patton was sentenced to sixty years on the murder conviction and thirty years on the rape conviction. The trial court ordered the sentence on the murder conviction to run consecutive to the rape sentence and the 132-year sentence.

On September 27, 2007, Patton filed a motion to correct erroneous sentence. He claimed that the trial court did not have the authority to order consecutive sentences because the rape and murder convictions had been transferred back and forth from two different Marion County courtrooms pursuant to an agreement between Patton and the

State. In support of his motion, Patton attached a “verified motion to transfer” and a “guilty plea document.” App. p.p. 103-05. That same day, the trial court denied Patton’s motion. Patton now appeals.

### **Analysis**

Patton contends that the denial of his motion to correct erroneous sentence was improper because the trial court did not have the jurisdiction or the statutory authority to sentence him to consecutive sentences. When reviewing a trial court’s decision to deny a motion to correct an erroneous sentence, we defer to its factual findings and review such decision for an abuse of discretion. Felder v. State, 870 N.E.2d 554, 560 (Ind. Ct. App. 2007).

A motion to correct erroneous sentence is limited to a sentence that is erroneous on its face. Robinson v. State, 805 N.E.2d 783, 786 (Ind. 2004). Our supreme court has explained:

When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable. Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the “facially erroneous” prerequisite should henceforth be strictly applied . . . . We therefore hold that a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.

Id. at 787.

Here, a motion to correct erroneous sentence is not the proper remedy. First, Patton did not include a sentencing judgment with his motion. His motion to transfer and guilty plea document, even when taken with his motion and memorandum, do not show that the sentencing order is facially invalid. Although on appeal Patton included the oral sentencing statement given by the trial court and a sentencing order, he has not established the facial invalidity of his sentence. Instead, his claim is based on what occurred at proceedings before his trial. Finally, it is not clear that the legal basis for Patton's claim was the standard in place at the time he committed the offenses. Also at issue is whether the trial court was in effect meting out two or more sentences when it ordered consecutive sentences. These questions are not appropriate for a motion to correct erroneous sentence. The trial court properly denied Patton's motion.

### **Conclusion**

Because Patton has not established that his sentence is facially invalid, the trial court properly denied Patton's motion to correct erroneous sentence. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.